

It is not enough, that the act relied on, is evidence of some agreement ; but, it must be unequivocal and satisfactory evidence of the contract, charged in the bill.

The remedy, in cases of specific performance, must be mutual ; and, if one of the parties is not bound, or is not able to perform his part of the contract, he cannot call upon the court to compel a performance by the opposite party.

[The object of this bill, which was filed by Harriet A. Beard, administratrix of John Beard, deceased, was the specific performance of a contract for the sale of land, alleged to have been entered into between the deceased husband of the complainant, and John H. Linthicum ; and also a writ of *ne exeat* against the said Linthicum.

The bill stated that Beard, in his lifetime, had bought a parcel of land from George H. Stewart, for the sum of three thousand dollars, which he afterwards agreee to sell to Linthicum for the same price, increased by the interest which had accrued on the purchase money due to Stewart ; and that Linthicum had agreed to give to Beard a bill of sale of certain negroes, to secure said payment. The bill further stated, that Linthicum took possession of the land in pursuance of the agreement, but that he had not paid any portion of the purchase money, or executed the bill of sale ; but that he had actually sold one of the negroes, and applied the proceeds of the sale to other purposes, (although upon Beard's remonstrating with him, he had promised to apply it to said payment ;) and that he was threatening to leave the state and carry the negroes with him.

Prayer for the specific performance of the agreement, an injunction to restrain Linthicum from selling the negroes, or removing them out of the state, and a writ of *ne exeat regno*, to prevent him from leaving the state.

Linthicum, in his answer, denied the making of the contract stated in the bill, and pleaded the statute of frauds thereto ; and further stated that he did agree to give \$1800 for the land, if Beard would procure the consent of Stewart to the sale, and have certain disputes relative to the boundaries of the land, settled ; that Beard, at the time said conditional agreement was made, proposed to him to take possession of the land at once,